

INTEL SOFTWARE LICENSE AGREEMENT

**Intel® True Scale Fabric Suite
(Internal Use and Object Code Distribution)**

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In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS. The following definitions apply in this Agreement:

1.1 “Derivative Work” means a derivative work, as defined in 17 U.S.C. § 101, of the Software Source Code, that You developed.

1.2 “Documentation” means the user manuals and other written materials that describe the Software, its operation and matters related to its use, that Intel provides in connection with, under, or subject to, this Agreement, and any updated, improved or modified version(s) of those materials, whether provided in published written material, on magnetic media or communicated by electronic means.

1.3 “Intel Products” means the products listed on Attachment A and any additional products that Intel later adds to Attachment A.

1.4 “License Fees” means the amount paid to Intel in exchange for the Software licenses granted in this agreement, as set forth in your order documentation.

1.5 “Licensed Patent Claims” means only those claims of Intel’s patents that are necessarily and directly infringed by the reproduction and distribution (that is authorized in Section 2.1) of the Software in its unmodified form as delivered by Intel to You and not modified, or combined with anything else. Licensed Patent Claims are only those claims which Intel can license without paying, or getting the consent of, a third party.

1.6 “Object Code” means computer programming code in binary form suitable for machine execution by a processor without the intervening steps of interpretation or compilation.

1.7 “Open Source Software” means

(A) any software that requires as a condition of use, modification or distribution of the software that that software or other software incorporated into, derived from or distributed with that software:

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- the Netscape Public License;
- the Sun Community Source License (SCSL);
- the Sun Industry Source License (SISL); and
- the Common Public License (CPL).

1.8 "Software" means the computer program, in Object Code and Source Code, identified in Attachment A, and any updated or improved version of the program that Intel provides to You under this Agreement, if any, but does not include Open Source Software or any computer programming code that is subject to an agreement, obligation or license (whether or not accompanying the computer program) intended to supersede or override this Agreement.

1.9 "Source Code" means a form in which a computer program's logic is easily deduced by a human being with skill in the art, such as a printed listing of the program or a form from which a printed listing can be easily recognized.

1.10 "Support" means any maintenance services, installation assistance, customized support, consulting, or similar assistance that Intel may consent to provide to You related to the Software or to facilitate Your productive use of the Software, as is more particularly described in Section 6.

2. LICENSE

2.1 Grant. Subject to Your payment of License Fees and Your compliance with the terms of this Agreement, Intel hereby grants You, during the term of this Agreement, a non-transferable, non-exclusive, non-sublicenseable (except as expressly set forth below), limited right and license:

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(B) under Intel's Licensed Patent Claims, to

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2.2 Restrictions.

- (A)** All rights, title and interest in and to the Software and Documentation are and will remain the exclusive property of Intel. Unless expressly permitted under Section 2.1(A), You will not, and will not allow any third party to:
- (1) use, copy or distribute the Software or Documentation;
 - (2) modify, adapt, enhance, disassemble, decompile, reverse engineer, change or create Derivative Works from the Software; or

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- (B) No right or license is granted or implied under any of Intel's copyrights, patents, trademarks, trade names, service marks or other intellectual property rights to use the Software or Documentation or to license or authorize others to use the Software or Documentation beyond the rights expressly set forth in this Agreement.
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2.3 Copies. In addition to the number of copies permissible under Section 2.1(A)(1), You may make a reasonable number of copies of the Software for archival purposes or for use as a back-up when the Software is not operational. You must copy all copyright legends, trademarks, trade names and other legends and identification when You copy the Software and Documentation. You will maintain records of the number of copies currently in Your possession or control, and will provide copies of those records to Intel upon request.

2.4 Open Source Software. If the Software includes Open Source Software, that Open Source Software is licensed under the applicable Open Source Software license agreement identified in the Open Source Software comments in the applicable source code file(s) and file header provided with the Software. Where applicable, the Documentation may contain additional detail. With respect to the Open Source Software, nothing in this Agreement limits any rights under, or grants rights that supersede, the terms of the applicable Open Source Software license agreement. You will not subject the Software or Documentation, in whole or in part, to any license obligations associated with Open Source Software, including combining the Software or Documentation with Open Source Software in a manner that subjects Intel, or any portion of the Software, to any license obligations of the Open Source Software.

3. FEES; ROYALTIES; TAXES

3.1 Fees and Payment.

- (A) You will pay Intel the License Fees in the amounts and at the times set forth in Your order documentation.
- (B) Your obligation to remit License Fees to Intel in accordance with Your order documentation is absolute, unconditional, noncancellable and nonrefundable, and will not be subject to any abatement, set-off, claim, counterclaim, adjustment, reduction, or defense for any reason including, but not limited to, any claim that Intel failed to perform under this Agreement or termination of this Agreement.
- (C) Past due amounts will bear interest at the rate of the lesser of 1-1/2% per month on the unpaid balance, or the maximum rate allowable by law. In addition to all other sums payable under this Agreement, You will pay all out-of-pocket expenses that Intel incurs, including fees and disbursements of counsel, in connection with collection and other enforcement proceedings resulting from or in connection with those proceedings.

3.2 Taxes.

- (A) All payments will be made free and clear without deduction for any present and future taxes imposed by any taxing authority. If You are prohibited by law from making such payments unless You deduct or withhold taxes from the payments and remit the taxes to the local taxing jurisdiction, then You must withhold and remit those taxes and pay to Intel the remaining net amount after the taxes have been withheld.
- (B) You will promptly furnish Intel with a copy of an official tax receipt or other appropriate evidence of any taxes imposed on payments made under this Agreement, including taxes on any additional amounts paid.
- (C) In cases other than taxes referred to above including, but not limited to, sales and use taxes, stamp taxes, value added taxes, property taxes and other taxes or duties imposed by any taxing authority on or with respect to this Agreement, You will bear the costs of those taxes or duties. If those taxes or duties are legally imposed initially on Intel or Intel is later assessed by any taxing authority, then You will promptly reimburse Intel for those taxes or duties plus any interest and penalties that Intel suffers.

4. TERM; TERMINATION

4.1 Term. The term of this Agreement will commence on the Effective Date and continue until terminated in accordance with this Section 4.

4.2 Termination. Intel may terminate this Agreement:

- if You materially breach any other provision of this Agreement, and You fail to correct the breach within 30 days of Your receipt of written notice of that breach or, if the breach is incapable of cure within 30 days, You fail to take substantial steps toward a cure within that period;
- immediately, if You breach any provision of Sections 2 or 7; or
- immediately, if You become insolvent or make an assignment for the benefit of creditors, or a trustee or receiver is appointed for You or for a substantial part of Your assets, or bankruptcy, reorganization or insolvency proceedings are instituted by or against You.

4.3 Effect of Termination.

(A) Expiration or termination of this Agreement will terminate Your license rights under this Agreement.

(B) Within 30 days after expiration or termination of this Agreement, You will furnish Intel a written certification that You have either returned to Intel or destroyed the original and all copies, including partial copies, of the Software that Intel furnished under this Agreement or that You made as permitted by this Agreement, and that no copies or portions of the Software remain in Your possession or in the possession of Your employees or agents

(C) Sections 2.1(C), 2.2, 2.3, 3, 4.3, 5, 7, 8, 9, 10 and 11 will survive expiration or termination of this Agreement.

5. OWNERSHIP

5.1 Feedback. To the extent You provide Intel with Feedback, You grant to Intel and Intel accepts, a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, transferable license, with the right to sublicense, under Your intellectual property rights to the Feedback to incorporate or otherwise use Feedback as provided by You to Intel. “Feedback” means Your requirements, inputs, comments, responses, opinions, feedback and errata, whether oral or written, concerning the Software and Documentation and Your technical system requirements for Intel to include in the Software definition, design or validation.

6. SUPPORT

6.1 Services. Support services are subject to the Software Maintenance Agreement available at www.intel.com/infiniband.

6.2 Additional Services. Intel has no obligation to perform any maintenance or other services not specifically provided for in this Agreement. However, if Intel agrees to perform services requested by You that are not included as part of this Agreement, Intel will bill You for those services at prices and on terms to be agreed by the Parties.

7. NO PUBLICITY

7.1 No Publicity. You may not use Intel's name, or the names of any Intel employees, in any publication, advertisement or other announcement, without Intel's prior written consent in each instance.

8. INDEMNITY

8.1 By You.

- (A) You will defend, at Your own expense, any legal action brought against Intel to the extent that it is based on an Indemnified Claim, which is any claims or allegations arising from or relating to Your breach of any provision of this Agreement including, but not limited to, a breach of Section 2;
- (B) You will pay any costs and damages finally awarded against Intel that are attributable to any Indemnified Claim or that Intel incurs through settlement of an Indemnified Claim, but will not be responsible for any compromise that Intel makes or expense that Intel incurs without Your consent. The defense and payments are subject to the condition that Intel gives You prompt written notice of the Indemnified Claim, allows You to direct the defense and settlement of the Indemnified Claim, and cooperates with You as necessary for defense and settlement of the Indemnified Claim.

9. WARRANTY

Disclaimer. Intel makes no warranties to You with respect to the Software or any Support, service, advice, or assistance furnished under this Agreement, and no warranties of any kind, whether written, oral, implied or statutory, including warranties of merchantability or fitness for a particular purpose, non-infringement or arising from course of dealing or usage in trade will apply.

10. LIMITATION OF LIABILITY

- (A) Intel's cumulative liability to You for all claims of any kind resulting from Intel's performance or breach of this Agreement or the Software furnished under this Agreement will not exceed the Fees actually received by Intel from You under this Agreement for the Software that is the subject of the claim or \$1,000, if the Software was provided at no charge to You, regardless of whether Intel has been advised of the possibility of those damages or whether any remedy set forth in this Agreement fails of its essential purpose or otherwise. This limitation of liability is cumulative and not per incident; the existence of more than one claim will not increase the limit.
- (B) Intel will not be liable for costs of procurement of substitutes, loss of profits, loss of use, interruption of business, or for any other special, consequential, punitive or incidental damages, however caused, whether for breach of warranty, contract, tort, negligence, strict liability or otherwise, irrespective of whether Intel has advance notice of the possibility of such damages. The limitation of liability set forth in this Section 10 is a fundamental basis of this Agreement; and each Party understands and agrees that the other would not have entered into this Agreement without the limitation of liability.

11. GENERAL PROVISIONS

11.1 Notices.

- (A) All notices required or permitted to be given under this Agreement must be in writing, make reference to this Agreement, and be delivered by hand, or dispatched by prepaid air courier or by registered or certified airmail, postage prepaid, addressed as follows:

If to Company, Attention:

If to Intel:

Intel Corporation
2200 Mission College Blvd.
Santa Clara, CA 95052
Attention: General Counsel
Reference ID: Scott Vonderohe, DCSG Legal

With a copy to: Post Contract Management
1900 Prairie City Rd.
Folsom, CA 95630
Attn: Cathie McCall FM3-78

(B) Notices will be considered served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Either Party may give written notice of a change of address and, after notice of such change has been received, any notice or request will be given to that Party at the changed address.

11.2 Audit Rights. Upon reasonable advance notice, Intel will have the right to inspect, or have an independent auditor inspect, Your facilities and records during normal business hours to verify Your compliance with the terms and conditions of this Agreement. If an inspection discloses that You are not compliant with these terms, Intel may exercise any or all rights and remedies provided under this Agreement or by law including, but not limited to, the right to recover the cost of the audit.

11.3 Export. The Software, Documentation and all related technical information or materials are subject to export controls and (are or may be) licensable under U.S. Government export regulations. You will not export, re-export, divert, transfer or disclose, directly or indirectly, the Software, Documentation and any related technical information or materials without complying strictly with all legal requirements including, without limitation, obtaining the prior approval of the U.S. Department of Commerce and, if necessary, other agencies or departments of the U.S. Government. Please access Intel's website, <http://www.intel.com/content/www/us/en/legal/export-compliance.html>, for information regarding the export classification of the Software that may be necessary to assist Your compliance with this provision. You will execute and deliver to Intel "Letters of Assurance" as may be required under applicable export regulations. You will indemnify Intel against any loss related to Your failure to conform to these requirements.

11.4 No Sublicensing, Assignment or Transfer.

(A) You may not delegate, assign or transfer this Agreement, or any of Your rights and obligations under this Agreement, and any attempt to do so will be void. In addition, You may not sublicense, assign or transfer any Software, Documentation, Confidential Information or any part of the Software, Documentation or Confidential Information, or any right in this Agreement to any third party temporarily (such as loaning, rental, licensing or timeshare) or permanently, except as expressly permitted under Section 2.1 or 2.2, without the prior written consent of Intel in each instance, which consent Intel may withhold in its sole discretion. Any attempted sublicense, assignment or transfer that is not expressly permitted under Section 2 or is without consent will be void.

(B) You agree that this Agreement binds You and each of Your affiliates and the employees, agents, representatives and persons associated with any of them. Without limitation of the foregoing, if there is a sale of substantially all of Your assets, a merger, a re-organization, or a change in control of 50% or more of Your equity, no transfer or assignment (including, without limitation, an assignment by operation of law) of this Agreement may be made without the prior written consent of Intel.

11.5 U.S. Government Contract Provisions. This Agreement is for Your temporary license of Software. No Government procurement regulation or contract clauses or provision will be considered a part of any transaction between the Parties under this Agreement unless its inclusion is required by statute, or mutually agreed upon in writing by the Parties in connection with a specific transaction. The technical data and computer software covered by this license is a “Commercial Item,” as that term is defined by the FAR 2.101 (48 C.F.R. 2.101) and is “commercial computer software” and “commercial computer software documentation” as specified under FAR 12.212 (48 C.F.R. 12.212) or DFARS 227.7202 (48 C.F.R. 227.7202), as applicable. This commercial computer software and related documentation is provided to end users for use by and on behalf of the U.S. Government, with only those rights as are granted to all other end users under the terms and conditions in this Agreement. Use for or on behalf of the U.S. Government is permitted only if the party acquiring or using this Software is properly authorized by an appropriate U.S. Government official. This use by or for the U.S. Government clause is in lieu of, and supersedes, any other FAR, DFARS, or other provision that addresses Government rights in the computer Software or documentation covered by this license. All copyright licenses granted to the U.S. Government are coextensive with the technical data and computer Software licenses granted in this Agreement. The U.S. Government will only have the right to reproduce, distribute, perform, display, and prepare Derivative Works as needed to implement those rights.

11.6 Force Majeure. Except for Your obligations under Section 3, neither Party will be liable to the other Party for delay in performing its obligations, or failure to perform any obligations, under this Agreement, if the delay or failure results from circumstances beyond the control of that Party including, but not limited to, any acts of God, governmental act, fire, explosion, accident, war, armed conflict, terrorist act or civil commotion. If there is a delay, the time for performance will be extended by the amount of time lost by reason of the delay; provided, however, should an event of force majeure described in this Section delay either Party’s performance in any material respect for a period of more than 90 days, then the other Party will have the option, upon giving written notice, to terminate this Agreement or the relevant portion of this Agreement affected by the delay.

11.7 Waiver and Severability. If either Party fails to enforce at any time any of the provisions of this Agreement, or to exercise any election of options provided in this Agreement, that failure will not constitute a waiver of that provision or option, or affect the validity of this Agreement or any part of this Agreement, or the right of the waiving Party to enforce subsequently each and every provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement will continue in full force and effect.

11.8 Governing Law; Jurisdiction.

(A) The procedural and substantive laws of the State of Delaware, U.S.A., without regard to its conflicts of laws principles, will govern this Agreement. This Agreement is

prepared and executed and will be interpreted in the English language only, and no translation of the Agreement into another language will have any effect. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from and will not apply to this Agreement.

(B) The state and federal courts located in the State of Delaware will have exclusive jurisdiction of all disputes and litigation arising out of or related to this Agreement including, without limitation, matters connected with its performance. Each Party irrevocably submits to the personal jurisdiction of those courts and irrevocably waives all objections to such venue.

11.9 Entire Agreement. This Agreement, the Attachments, Exhibits, Appendix and Non Disclosure Agreement(s) contain the complete and exclusive statement of the agreement between the Parties and supersede all proposals, oral or written, and all other communications between the Parties relating to the subject matter of this Agreement. Only a written instrument duly executed by authorized representatives of Intel and You may modify this Agreement.

ATTACHMENT A

Description of Software specifically licensed under this Agreement: Intel® True Scale Fabric Suite (including Intel® True Scale Fabric Management Software and Intel® True Scale Fabric Suite Fabric Viewer)

Intel Products: Intel® True Scale Fabric Products

Permitted Use. You may only install the Software in accordance with the Documentation provided with the Software. Your purchase order identifies the Intel® True Scale Fabric Suite product and applicable Intel chassis or number of switch ports for such product. Depending on the Intel product and as detailed below, You must obtain chassis licenses (for 12000 series) and/or port licenses (for 9000 series and bladed switches). Port licenses must, in the aggregate, equal or exceed the total number of 9000 series and bladed switch ports in the InfiniBand fabric.

For 9000 series and bladed switch products, if Your InfiniBand fabric contains “n” total switch ports, You must obtain port licenses in the aggregate for at least “n” switch ports (with “n” equal to the aggregate number of switch ports identified in Licensee’s purchase order).

For each 12000 series product, You must purchase the Intel® True Scale Fabric Suite license that corresponds to the 12000 series chassis model number.

Regardless of product type, for each Software license You purchase, You may install the Software on any number of host systems, so long as the number of host systems does not exceed the number of switch ports for the 9000 series and bladed switch products, or the port count of the 12000 series chassis, for products identified in Licensee’s purchase order. You also may install the Fabric Manager host-based Software on two host systems in the same subnet for redundancy purposes, or the Fabric Manager switch-based Software on two managed spines in the same subnet for redundancy purposes.

ATTACHMENT B

End User Agreement Terms

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